redelivery was to be made with the intention of reinvesting a complete legal title in the grantor. The grantee died without having the deed recorded and it was redelivered according to his instructions. The grantee brought about this redelivery by fraudulent promises to convey this half-section to her sister. *Held,* that the legal title descended to the heirs of the grantee, but that such redelivery vested the equitable title in the grantor. A constructive trust arose in favor of the sister because of the fraudulent acts of the grantor. *Crossman et al.* v. *Keister et al.* (1906), — Ill. —, 79 N. E. Rep. 58.

This case seems to be in accord with the authority; the general rule is that where a grantee redelivers the deed, before registration, to the grantor, with the intention that the title revest in the grantor, such grantor takes an equitable and not a legal title. This equitable title may operate as a good defense to an action by the grantee to establish title, as in *Happ* v. *Happ,* 156 Ill. 183. In some States this equitable title is practically equivalent to a legal title because the grantee, having voluntarily destroyed the best evidence of his title, is estopped to introduce any other evidence. See *Mussey* v. *Holt,* 24 N. H. 248; *Dodge* v. *Dodge,* 33 N. H. 487; *Sawyer* v. *Peters,* 50 N. H. 143; *Howard* v. *Huffman,* 40 Tenn. 564; *Peterson* v. *Carson* (1898), — Tenn. —, 48 S. W. 383; *Potter* v. *Adams* (1894), 125 Mo. 118. A deed was canceled as a cloud upon the title in *Huffman* v. *Huffman,* 69 Tenn. 491. In North Carolina, as the grantee gets only an equitable title until registration, such a redelivery to the grantor revests a complete title in the grantor, provided no intervening interests have attached. *Austin* v. *King,* 91 N. C. 286; *Fortune* v. *Watkins,* 94 N. C. 304. In Arkansas it has been held that the legal title does not revest, but equity will enforce a constructive trust, where it would be fraud to let the grantee keep the legal title. See *Neal* v. *Speigle,* 33 Ark. 63; *Talliaferro* v. *Rolton,* 34 Ark. 503. In the principal case, the grantee was deprived of the equitable title because of her fraudulent promise.

EASEMENTS BY PRESCRIPTION—LIMITATION OF ACTIONS.—An action by a tenant of an abutting owner against an elevated railroad company for injury to easements, brought within the prescriptive period, does not interrupt the running of the statute of limitations against the owner, and the owner cannot, after more than twenty years from the commencement of the operation of the railroad, maintain an action for injury to the easements. *Goldstrom* v. *Interborough Rapid Transit Co. et al.* (1906), 100 N. Y. Supp. 911.

The question whether elevated railroads may acquire easements of abutting owners by prescription was finally settled in the affirmative in New York, after various holdings covering a considerable period of time, in June, 1906, in *Hindley* v. *Manhattan Ry. Co.,* 185 N. Y. 335; 5 MICHIGAN LAW REVIEW, p. 127. In the case at bar the further question is presented whether an action by a tenant stops the running of the statute of limitations in favor of the landlord. The court holds that it does not; that though the cause of action in favor of the landlord and that in favor of the tenant may be for the same wrong and for similar relief, an action by the latter cannot be held legally to stop or interrupt the statute when it has once been set running as against the landlord. The law that different prescriptions may exist in favor of different

persons in respect to the same land is well established. In this case, however, there is nothing to show whether the estate of the tenant was created before the construction of the railroad or afterwards. There is an obvious distinction, for where the time has begun to run against the landlord, the interposition of a particular estate does not stop it. WASHBURN, EASEMENTS AND SERVITUDES (4th Ed.), p. 148; WOOD, LIMITATIONS (4th Ed.), § 270.

EVIDENCE—PRIVILEGED COMMUNICATIONS—SPIRITUAL ADVISERS.—Under a statute making statements to a minister of the gospel privileged, *held,* that such statements to be privileged must be made to him in his professional capacity and under the rules of practice of the denomination to which he belongs. *State* v. *Morgan* (1906), — Mo. —, 95 S. W. Rep. 402.

There has been considerable speculation as to whether at common law there existed any such privilege, covering communications made to clergymen or ministers of the gospel. The prevailing opinion seems to be that there did not. The early cases on the subject are, however, by no means in harmony. In BEST, EVIDENCE, § 584, it is said, "There cannot be much doubt that previous to the Reformation, statements made to a priest under the seal of confession were privileged from disclosure, except perhaps when the matter thus communicated amounted to high treason." The learned author, in support of his statement, refers to the Laws of Hen. I (Leges Hen. I, c. 5, § 17) and the Statute Articuli Cleri (9 Edw. II), c. 10. Be this as it may, the privilege had, at the beginning of the nineteenth century, apparently secured no firmer foothold in the English law than an opinion in the minds of some courts, of eminent respectability it is true, that such a privilege *should* exist. The arguments advanced in its favor are well given in TAYLOR, EVIDENCE, 9th ed., § 917, "The propriety of extending privilege to communications admitting criminal conduct, has been strongly urged, on the ground that evil-doers should be enabled with safety to disburthen their guilty consciences, and by spiritual instruction and discipline to seek pardon and relief." In *Reg.* v. *Griffin,* 6 Cox Cr. C. 219, Baron Alderson, in refusing to allow such testimony to be given says, "I think these conversations ought not to be given in evidence. The principle upon which an attorney is prevented from divulging what passes with his client is that, without an unfettered means of communication, the client would not have proper legal assistance. The same principle applies to a person, deprived of whose advice, the prisoner would not have proper spiritual assistance." In the case of *Broad* v. *Pitt,* 3 C. & P. 518, decided in 1828, it was stated that the question as to the existence of the privilege had been decided in the negative by the case of *Rex* v. *Gilham,* 1 Mo. C. C. 186, decided the same year. This latter case while frequently cited on this proposition would seem not to have decided the question at all but to have gone off on the fact that "illegal inducements to confess" were extended to the prisoner. In deciding the former case, however, BEST, C. J., says, "I for one will never compel a clergyman to disclose communications made to him by a prisoner." There is a very extensive and instructive discussion of the early English cases on this subject, and a strong argument for the recognition of the privilege in BEST, EVIDENCE, 9th ed. §§ 583-584. See also